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IN THE DISTRICT COURT OF THE Notice of Application for Permission FIRST JUDICIAL DISTRICT OF THE STATE OF NEVADA In and for the County of Ormeby.

Marion W. Buckley, ... Plaintiff agrad and delait, beginners oseph W. Buckley, Defendant.

Action brought in the District Court the complaint fled in the said county. in the office of the Clerk of said Ditrict Court on the 24 day of December, A. D. 1905.

THE STATE OF NEVADA SENDS GREETING TO JOSEPH W. BUCKLEY.

You are hereby required to appear in an action brought against you by the above named Plaintiff, in the Di trict Court of the first Judicial District of the State of Names Owners County, and snewer complaint flesh therein within ten days (exclusive of the day of service) after the served on you of this Summers is served at said county, or if served out of said County, but within the District, twenty days, in all other cases forty days, or judgment by default will be taken against you according to the prayer of said complaint

The said action is brought to obtain the judgment and decree of this court ond semi-annual apportionmen t of that the bonds of matrimony here ... School Moneys fer 1905, on the basis fore and now existing and uniting you of \$6.390202 per ceasus child: and said plaintiff to be forever annu- Counties land, you lived and conshited with said Kate Cottrell.

All of which more fully appears ou are hereby referred.

And you are hereby notified that II you fail to answer the Complaint, the said Plaintiff will apply to the Court GIVEN under my hand and Seal of the

District Court of the First Judicial District of the state of Nevata Ormsby County, this he day of December, in the year of dir Lord jone thousand nine hundred and Pive.

H. W. VAN BETTER, Clerg.

Attorney for Plaintin

the State of Nevada.

obcases seven the construction 1, 1906, and shall be completed on or

HEA..Y THURWELL,

To the School Officers of Nevada: Following is a statement of the sec-

Lyon Nye

tailor made suitings which are, with-mat Soubt the fixed over shown in the hity. A numbered routs have

to Appropriate the Public Waters of

Notice is hereby g iven that on the 12th day of Sept., 1805, in accordance with Section 23, Chapter ELVI, of the Statutes of 1905, one Philip V. Mighels and Frank L. Willies of Carson. County of Orinaby and Rate of Novada made supplication to the State Engineer of Movada for separateries to appropriate the public states of the

SCHOOL APPORTIONMENT

Department of Education, Office of Superintendent of Public In

Carson City, Nevada, July 11, 1905

Joe Platt has received samples of

SUPREME COURT DECISION. N THE SUPREME COURT OF THE

Washoe County Bank,

Appellant.

Mesers Goodman and Webb, Dodge and
Parker, Attorneys for Respondent.

Mesers Cheeney and Massey, Attorneys for Appellant.

OPINION

On March 1 1992 James Bellant

On March 1, 1893, James Pollock, his wife Delia and Daniel Powell, who are admitted to have been the owners at that time, executed to B. U. Steinman and C. H. Cummings as trustees, a trust deed for certain property near Reno to secure the payment of a promisory note of the same date giv-en by the Pollocks and Powell to Farmers and Mechanics Savings Bank of Sacramento for \$8,000 and interest. This deed directed the trustees in case of default in payment, to seil the property at Sacramento after giving notice, to apply the proceeds in satisfaction of the note and costs of sale and to pay any excess to the

On August 31, 1895, the Pollocks and Powell executed to Martin Gulling a mortgage on the same premises for \$2,082.60, and interest thereon trom that date at eight per cent per annum, which is sought to be foreclosed in this action and which specified that it was given subject to the trust deed. On February 23, 1897 the Pollocks and Powell conveyed their interest in the property to Washoe County Bank for stated consideration of \$14,000.00, which comprised the amount of \$8,-800, estimated to be due to the Farmers and Mechanics Bank of Sacramento on the note secured by the trust deed and \$5,200 due from the Pollocks and Powell to the Washoe County Bank on unsecured notes which were surrendered to them. On February 26, 1897, the Farmers' and Mechanics' Savings Bank commenced suit to recover the amount due on its note stated at \$8,639.73, and for a forclosure of the trust deed and sale to satisfy that amount against the Pollocks, Poweil, Thomas E. Haydon, Henry Anderson, John Doe, Richard Roe, Michael Doe, B. U. Steinman and C. H. Cummings Neither Martin Gulling nor the Washoe County Bank were named as parties in the complaint, but both were served with summons under the ficticious designations of defendants who were alleged to have some title, claim or interest which was second and subordinate to the right of the Farmers' and Mechanics Bank arising from the trust deed. On March 8, 1897 Martin Gulling filed an answer in that action in which the name of Washoe County Bank is not mentioned in the title body or prayer. It stated that its allegations were made "in obedience to summons therein issued and served upon him and answering the com-plaint therein." In this answer ne somitted the priority of the claim of the Farmers and Mechanics Sav-ings Bank under the trust deed, hereby avoiding any real between with the plaintiff, but he alleged ne execution of the mortgage to him by the Pollocks and a well, that other all right, claim, on pasity, of so-

On March 20, 1897, twelve gays after the court house incr. at Sacramento to the Washoe County Bank for \$100 the amount live the sarmers and Mechanics Bank on the aster secured by the trust deed and the sum estimated for costs. Over four months County Bank filed its answer without naming Gulling in the title and prefaced its averments with the pecita ...at "as required by summons served on said Bank and answering said summons and the complaint filed in said action" it made its anegations setting out the execution o. the trust deed, the sale thereunder and the deeds from Steinman and Cummings as trustees and from the Pollocks and Powell to Washoe County Bank These facts, and they controlled the court later in its decision in that case, do not purport to be stated against Gulling. But directly after their statement as so alleged in answer to the complaint, follows an allegation in the nature of a conclusion of law. "that the equities of all the other ue-fendants, including Gulling, were fore-closed and barred," and a demand for a decree accordingly against them and the plaintiff. This answer does not in any part of it purport to allege as a crose complaint or in terms as against Gulling the sale under the trust deed by the trustees to Washoe County Bank, nor does it appear to have been served upon him. He filed no demarrer, answer or raply to it and the record indicates that he offered no evidence regarding it.

having before the hearing made and alors a discinitive of all interest in the action, and an admission that

I have no me of

ested. That Martin Guld and submitted evidence and proofs and thereupon rested and that Henry Anderson, Washoe County Bank and "the defindants and each of them having stimulted evidence and proofs in support of the issues made by them in their answers, the case was sub-mitted to the court." The fair in-ference from the language and from the fact that he was first to submit proofs is that he introduced evidence to support the allegations of his answer which averred the execution and non-payment of his mortgage, but that he did not offer any in relation to other facts alleged in the answer of Washoe County Bank. The findings and decree in that action disposed of the claims of these other defendants and found and declared that the sale and deed made by the trustees was in accordance with the terms of the trust deed and that by such sale and deed all the interest in the property was conveyed to Washoe County Bank clear of Gulling's mortgage, and that the latter was entitled to a judgmeat against the Pollocks and Powell for tue amount due on his note but not to a degree of foreclosure. The findings recite that "defendant Gulling was made a party to the action and was duly served with process therein, and in due time filed his answer to plaintiff's complaint,' but it does not appear that there was any other sergations and demands of the complaint, or that would cut off his right by reason of the sale by the trustees which did not take place until after he had filed his answer. The court tound in both actions that \$8,800.00, estimated to be the amount due the armers' and Mechanics' Bank and notes held by Washoe County ank against the Pollocks and Powen for \$5,200,00 unsecured after the execution of the mortgage to Gulling, consituted the consideration expressed at \$14,000.09 for the deed from them to Washoe County Bank, and that the property was worth about that sum at the date of the trustees' sale and the time of the trial.

A blank space in the decree in the first action for judgment in the amount owing by the Pollocks and Powell to Gulling on his note and its purchase, necessarily it would have mortgage remains unfilled. The case pleaded the fact by supplemental now before the Court was brought by complaint, and they would not have Martin Gulling on June 9, 1902 against been considered denied by Gulling's Washoe County Bank as grantee to answer to the original complaint, and foreclose his mortgage so executed on the premises by the Pollocks and Powell before they deeded to defendant, and is now prosecuted by the rep- been served with the original comfendant pleads by way of estoppel, could not have been taken by default the judgment in the former action and against him. In Mitchess v. Mitchell, claims that by it Gulling was, and his executors are barred and foreclosed action of the district court whereby County Bank. The district court was manded in the complaint served upon of the opinion that in the earlier suit the defendant. That was pursuant to

the decree. The met state

the issues as between Gulling and appollant, and if they ways and, the importation the first own which they way to the training of issues so that his besime bound as were in the other of the training of issues so that his besime bound as were the complaint of Farmess and Mechanical is the complaint of the training answer. These ways is research to the execution and any opyment of this moving and an any and an another of the trustees as a which old place for the trustees as a which old place for the trustees as a which old place for the trustees as were the county failed to have the proper and to pay his debra, but the answer to the answer of the Washes County Faile, on the county for the trustees as is for his own and the county failed to have the proper and to pay his debra, but the answer was find before the sale and before the the answer of the latter.

On behaff of appellant it is urged that the only bleiding provided or allowed by the Practice Act for the allowed and the Act was a complaint and the allowed by the Practice Act pleading to the cross-complaint, and him. As respondent contends, he that the statutes naving failed to could be in court for others. He could be dilling is, Sioux City, In., designate the methods of bleading be and not for others. He could be tween co-designables equity practice beginning to the could be tween co-designables equity practice beginning and designable has been serviced by the best could be supported by proper at must be followed off it be best could be supported by proper at the argument that the smaller will be supported by the argument that the smaller will be supported by the street tweet to the argument that the smaller will be smaller as well as a small best to the argument that the smaller will be smaller as well as a small best to the same him.

complaint, or that issue would be ised against a voidefendant by the mere filing without service of an answer containing new matter alleged against the complaint of the plaintiff. The answer of Washee County Bank in the former suit not having been served upon Gulting, and he having lied no demu rer, answer or reply to t, which would nave been a waiver f service, we feel constrained to hold hat it raised no issue against him, and if we concede for the purpose nere that denial by statute without any pleading in reply is sufficient be-ween co-defendants, such denial ught not to become operative before ervice. White v. Patton, 87 Cal. 151: dements v. Davis, No Ind., 631. To practice, might cause litigants to suffer a great injustice. An answer to complaint ought to be served upon tae plaintiff but if it is not he mabe expecting it, or to secure a default, he could not obtain judgment without being aware of it, and would not be likely to go to trial without being prepared to meet the statutory denial in his behalf of any new matter it alleged. It is different between vice upon him, or issue made that ter it alleged. It is different between rendered him liable beyond the alleare not adverse, except to the plaintiff, and one defendant may not -xpect that another defendant will set up a cause of action and seek a judgment against him, and if he does he should not be required to watch the court records as Gulling could have done for over four months after his answer was filed to ascertain whether any of his co-defendants filed a crosscomplaint against him, in order that answer was filed, to ascertain whether bound by any judgment based upon it. If the Farmers' and Mechanics' Savings Bank instead of the Washoe County Bank had bought the property

without service upon or waiver of service by him, a valid judgment based upon facts occurring after he had esentatives of his estate. The de plaint and filed his answer thereto, of all right to proceed against Washoe it granted a plaintiff relief not deit did not have jurisdiction to make the judgment effective in quieting the fittle of appeallant against Gulling, and it has now entered a decree of foreclosure and sale to satisfy his mortgage, from which this appeal is taken.

The important questions under the record and elaborate and interesting briefs are whether the matters of the defendant. That was pursuant to statute, but there is no more reason for holding a defendant hable on a judgment based on a cross-complaint or pleading of a co-defendant without service, than on one resting on a composite taken.

It is said that service of the answer

Mr. Community so Finance South

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matter which one defendant may all self, without becoming liable further lege against a co-defendant and that This is well illustrated by the finding no answer or reply thereto is required it would still see a dangerous precedent, which we would be reluctant to establish, to hold that the statute denies for a co-defendant facts not alleged against him at stated in the answer of another defendant to the last would be a decree of foreclosure in favor of Guillag both would have been another would be a decree of foreclosure in favor of Guillag both would have been another would be a decree of foreclosure in favor of Guillag both would have been another the state of the court would be a decree of foreclosure in favor of Guillag both would be a decree of foreclosure in favor of Guillag between the f favor of Guiling, both would have be void against the Pollocks and Powell for lack of service as is the judgment against them based on the trustees sale and it has been held that if one of the parties to a judgment is not bound, the other is not. They had been served by the Savings Bank with complaint or summons seeking the foreclosure of the trust deed and filed a demurrer. For the purpose of that complaint and to the extent of demands they were in court or were bound, but a judgment against then for the amount or foreclosure of the Gulling note and mortgage, when they had not been served with pleading or process regarding these would have been void. The court has jurisdiction of the subject matter of all questions involved in this litigation, but of the parties no further than they presented themselves or were served with plea 1ings or process or waived service or issues. If a complaint and summons on a demand for one thousand dollars is served upon a defendant, a jude ment for ten thousand would be void. ecause the district court would have jurisdiction over him to the extent of only one thousand, while as far as subject matter is concerned, it has jurisdiction in any amount.

The facts were quite different and the principal involved distinguishable n. Maples v. Geller, 1 Nev., 236. There an answer which did not demand judgment upon new matter was filed to the complaint but not served. The question was not between co-defendants. The court said that the filing of the answer gave it jurisdiction over the defendant. Stripped of dicta that decision propertly deterhe might be prepared to meet it. Un- mined that the filing of an answer til he is warned by service of the to the complaint without service propleading and demand or waives service a judgment for the plaintiff vice or issue, he ought not to be by default. While here we hold that property rights cannot be lost or adjudicated upon an answer or pleading by a defendant seeking affirmative relief on new facts against a co-defendat the trustees' sale and relied upon ant without service or an issue or waiver.

Questions are presented upon the record in this case whether or not, under the provisions of the practice act of this State, the answers filed by Martin Gulling and the Washoe County Bank in the suit instituted by the Farmers' and Mechanics' Savings Bank, in so far as they sought affirmative relief against co-defendants. are answers as contemplated by our statute, or whether they are in fact equitable cross-bills. If the latter, whether or not, under the practice act, they are permissible pleadings, and further, if permissible pleadings. whether or not the dismissal of the plaintiff's complaint would not require the dismissal of the entire proceeding. These questions, however, under the view we have taken of this case are not deemed necessary to be determined.

The judgment and order of the dis trict court are affirmed.

Pitererald, C. J.
Filed Nov. 28, 1965.
W. G. Douglass

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ANNUAL STATEMENT of The State Life Insurance Company Indianapolis, Ind. Capital (paid up) Assets (admitted) 3,160,083 3a Liabilities, exclusive of conf 4.615,497 63 tal and net surplus Premiums Other sources Total income, 1904 197,125 61 4.224,032 78 Losses 300,902 63

Other expenditures 1,050,102 76 Total expenditures, 1904 1,416,245 56 ATTENDED BOOK AND THE Risks written 23,276,143 00 Premiums thereon Losses incured 316,887 00 Nevada Business.

Risks written Premiums received 5,000 00 W. S. Wyan Secretary. Ho. For the West.

Tell your friends that the colemist rates are going into effect March let. 1905 and expire May 15, 1905. The rate from Chicage, Ill, \$31.00, St. Louis Me., New Orleans, La, \$30 60, Souncti Bluffs Is., Sloux City. Is., Omahe, Neb., Kansas City, Me., Mineola, Texas and Houston Toxas, \$25.00. Baton apply to Main Line meints in Califor